

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

JTH TAX, INC., d/b/a LIBERTY  
TAX SERVICE,

Plaintiff,

v.

CIVIL NO. 2:11CV59

TROY CLARK and SOUTHWEST TAX  
STORES, LLC,

Defendants.

VOLUME 2

DEPOSITION OF TROY CLARK  
May 23, 2011  
1:26 p.m.  
500 4th Street, Suite 105  
Albuquerque, New Mexico 87102

PURSUANT TO THE FEDERAL RULES OF CIVIL  
PROCEDURE, this deposition was:

TAKEN BY: SADA L. SHELDON  
ATTORNEY FOR PLAINTIFF

REPORTED BY: PAUL BACA, CCR #112  
PAUL BACA COURT REPORTERS  
500 4th Street, NW, Suite 105  
Albuquerque, New Mexico 87102

1 directed her where to apply those.

2 Q. And are these accounts the same accounts  
3 that we have already gone over?

4 A. Yes.

5 Q. Do you have a record of these payments?

6 A. Yes.

7 Q. And where is that record?

8 A. It would be contained within the bank  
9 statements of Southwest Tax, as well as there's a  
10 schedule that I have on Excel to apply against the  
11 outstanding promissory notes.

12 Q. Now who directs those payments into  
13 Southwest's account -- into the Southwest accounts?

14 A. Could you please clarify the question?

15 Q. Do you know who directs the payments on  
16 Freedom Tax to Southwest Tax?

17 A. Kim Gutierrez directs the payment from  
18 Freedom Tax.

19 Q. Have you ever initiated a transaction from  
20 the Freedom Tax accounts to the Southwest Tax  
21 accounts?

22 A. In conjunction with Ms. Gutierrez, yes.

23 Q. What do you mean by "in conjunction with"?

24 A. As we met to go through the process of --  
25 if we were at my house and logged on to my computer

1 on the account, we would be logged in under my name  
2 and initiate the transaction.

3 Q. What are other reasons why you'd log on to  
4 the Freedom Tax account?

5 A. As a signator on the account, having  
6 other -- my other account at Wells Fargo, every time  
7 I log in to one of my accounts the Freedom account  
8 pulls up, so there is not a specific account into  
9 Freedom Tax.

10 Q. Why is your being a signator a part of the  
11 condition of your purchase and sale with Freedom  
12 Tax?

13 A. That was an agreed-upon point with the  
14 asset sale.

15 Q. Why did you include it in the agreement?  
16 What was your reasoning for including it in the  
17 agreement?

18 A. I had a \$520,000 balance owed to me and  
19 wanted to be able to see where the funds were at at  
20 any point in time; simple form of collateral.

21 Q. Have you ever put any money into the  
22 Freedom Tax account?

23 A. Not to my knowledge.

24 Q. Let me clarify. Has Southwest Tax ever  
25 put any money into the Freedom Tax account?

1 the promissory note?

2 A. If you look at the last paragraph of  
3 Section 1.4 beneath the earn-out agreement --

4 Q. Okay.

5 A. -- on December 31 of the current year any  
6 and all reductions in the purchase price were  
7 reflected in a cancellation of the existing  
8 promissory note upon the buyer entering into a new  
9 revised promissory note with the appropriate  
10 reduction in the outstanding balances.

11 So what will happen is if the conditions  
12 necessitate, according to Section 1.4, a reduction,  
13 then the old promissory note will be cancelled and  
14 the new one will be entered into, but only if a new  
15 one is entered into for the applicable dollars.

16 Q. So what was Freedom Tax's revenue so far,  
17 January 1st, 2011, through, I don't know, April 30,  
18 2011?

19 A. You'd have to ask Freedom Tax that  
20 question.

21 Q. Have they given you any reports on their  
22 revenues since operations?

23 A. They have.

24 Q. And when were those reports made?

25 A. On a daily basis.

1 documents that you sent me this morning?

2 MS. SHELDON: Yes.

3 MR. GAYNOR: Let me take a look at them  
4 first.

5 MS. SHELDON: Sure.

6 (A recess was taken from 2:00 p.m. to 2:02  
7 p.m.)

8 (Exhibit marked, 17.)

9 Q. (By Ms. Sheldon) Okay. Now, where were  
10 we? Exhibit -- well, I've marked these one, two,  
11 three, four checks as Exhibit 17. The first page  
12 is -- the first check was made out to San Mateo  
13 Indian School, LLC, in the amount of \$2,400. Do you  
14 know what that payment was for?

15 MR. GAYNOR: Remember her admonition  
16 earlier in the day, which was to not guess.

17 A. This payment was made for the initial down  
18 deposit and January rent.

19 Q. (By Ms. Sheldon) Okay. And is that your  
20 signature on this check?

21 A. Yes.

22 Q. What was the reason why you would write  
23 this check?

24 A. Ms. Gutierrez and I sat together to go  
25 through the bills as we were contemplating the

1 transaction. And she was there, I was there, I just  
2 happened to sign them. I'm a signator on the  
3 account. It was a bad habit of grabbing checks off  
4 the printer and signing them.

5 Q. And then it looks like there is also a  
6 check made out to, you said, Mike S. Bilow for  
7 \$1,550. Do you recall what this check was for?

8 A. If we're referring to check number 3102,  
9 it's for \$1,500 even. That would be for the January  
10 rent of the Rio Rancho location.

11 Q. Okay. Is that your signature?

12 A. Yes.

13 Q. And what was the reason you signed this  
14 check for Freedom Tax?

15 A. The same as before. Kim and I got  
16 together to pay the bills, and I grabbed them off  
17 the printer and signed them.

18 Q. Was it the same day as the other check we  
19 just looked at?

20 A. Yes.

21 Q. And the next check, check number 3104,  
22 made out to Eubank Plaza West Investors for  
23 \$1,172 -- is that two cents or is that --

24 A. That's correct.

25 Q. What was this check for?

1           A.     The check was for the January 2011 rent  
2 for the Eubank location.

3           Q.     Is that your signature?

4           A.     Yes.

5           Q.     And was this check signed on the same day  
6 as the other two?

7           A.     Yes.

8           Q.     Okay. And then the last check,  
9 number 303, made out to Laramie Square for \$1,050,  
10 also January rent. Is that correct?

11          A.     Clarification. That would be check  
12 number 3103.

13          Q.     3103. Thank you.

14          A.     That was for the January rent of the  
15 San Mateo location, at 3118 San Mateo.

16          Q.     And it's got your signature?

17          A.     Yes.

18          Q.     And was this signed on the same day as the  
19 other three checks?

20          A.     Yes.

21          Q.     You said you signed these checks. You and  
22 Kim had sat down and gone over bills together?

23          A.     That's correct.

24          Q.     And what was the purpose of that meeting?

25          A.     To go over the bills that were then due,

1 residence at 11475 Ranchitos Road, Northeast.

2 Q. Okay. When is the last time you spoke  
3 with Ms. Gutierrez?

4 A. Last week, I believe.

5 Q. And what was the conversation about?

6 A. We stay in constant communication, so I  
7 don't remember the exact details. Most likely over  
8 the scheduling times of the depositions. That was a  
9 topic that was discussed. Was it discussed in the  
10 last one? I don't have a recollection.

11 Q. How do you two usually communicate?  
12 E-mail? Phone?

13 A. Usually by phone.

14 Q. And how frequently do you communicate with  
15 each other? Do you speak every week?

16 A. It varies. I mean for all forms of  
17 communication throughout the tax season, she would  
18 e-mail me daily reports, if that is a means of  
19 communication.

20 How often do we talk on the phone? It  
21 could be two days in a row, it could go two days  
22 without talking.

23 Q. Have you discussed this lawsuit?

24 MR. GAYNOR: I object as to the vague  
25 nature of that question.



## CERTIFICATION

I, the officer before whom the foregoing deposition was taken, do hereby certify that I personally recorded the testimony of the witness whose testimony appears in the foregoing deposition; that said deposition is a true record of the testimony given by said witness; that I am neither attorney for, related to, nor employed by any of the parties to the action in which this deposition is taken, and that I am not a relative or employee of any attorney employed by the parties hereto, or financially interested in the action.

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PAUL BACA, RPR, CCR  
Certified Court Reporter #112  
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